

Appropriations Resolution for FY 2003, Congress stated:

"The conferees are particularly concerned about nursing and allied health educational programs that cannot meet the regulations set forth at 42 CFR 413.85(f) solely as a result of regional educational accrediting criteria. Given the shortage of nursing and allied health professionals, the conferees support the payment of costs on a reasonable cost basis for a hospital that has historically been the operator of nursing and allied health education programs(s) that qualified for Medicare payments under 42 CFR 413.85, but, solely in order to meet educational standards, subsequently relinquishes some control over the program(s) to an educational institution, which meets regional accrediting standards; is wholly owned by the provider; and is supported by the hospital, that is, the hospital is incurring the costs of both the classroom and clinical training of the program." (H.R. Rep. No. 108-10, 108th Cong., 1st Sess., 1115 (2003).)

However, we note that the proposed policy would not allow these hospitals to be paid for additional classroom costs for courses that were not paid on a reasonable cost basis to the hospitals in conjunction with their provider-operated programs (for example, additional classes needed to meet degree requirements). We believe that to allow pass-through payment for those additional costs would provide these hospitals with an unfair advantage over other hospitals with provider-operated programs.

We note that any hospital that chooses to restructure its programs to be operated by a wholly-owned subsidiary educational institution on or after the effective date of this proposal when finalized (October 1, 2003) would not be eligible for pass-through payments under the proposed provision unless the hospital continues to meet the requirements of § 413.85(f). We believe it is appropriate to limit the proposed payments to hospitals that restructured before October 1, 2003 because our policy with respect to programs by a wholly-owned subsidiary of a hospital will have been clarified by that date (the date that this final rule is effective).

We proposed to revise § 413.85 by adding new paragraphs (d)(1)(iii) and (g)(3) to reflect the proposed payment policy.

Comment: Several comments supported our proposal. Specifically, the commenters believed that the proposed rule is consistent with the recent expressions of Congressional intent reflected in the conference report to the 2003 Consolidated

Appropriations Resolution, which recognize that there is a shortage of nursing and allied health professionals, and that payments made for programs that are operated by wholly-owned subsidiary educational institutions of hospitals should not be retrospectively recouped and may continue in the future.

However, several commenters disagreed with the proposal under proposed § 413.85(g)(3)(iii) that, effective for portions of cost reporting periods occurring on or after October 1, 2003, eligible hospitals could receive payment for the clinical training costs and for the classroom costs, but only those classroom costs incurred by the hospital for the courses that were included in the program(s) that had originally been provider-operated before transfer of operation of the program(s) to a wholly owned subsidiary educational institution. One commenter stated that such criteria regarding reimbursement of classroom costs appears to presume that while a hospital was operating its own program before transferring the operation of the program to a wholly-owned subsidiary, the hospital must have offered fewer or different programs. The commenter believed that our example in the preamble of the proposed rule seems to suggest that "noncore" or nonnursing related classes would be excluded from reasonable cost reimbursement, effective October 1, 2003. The commenter contended that we have incorrectly assumed that diploma programs include only nursing courses because, in fact, such diploma programs typically included general courses for English, basic science, math, and similar subjects. The commenter asked that we revise the preamble to clarify that courses for which costs were historically reimbursed would continue to qualify for reasonable cost payment without regard to whether they are "core" or "noncore" nursing courses.

Other commenters argued that restricting reimbursement to courses originally offered by the provider-operated program would discourage providers from ensuring that training of health care professionals is kept up to date and would not allow providers to meet evolving requirements of accrediting organizations. One commenter noted that the conference report accompanying the Consolidated Appropriations Resolution for FY 2003 states that " * * * the conferees support the payment of costs on a reasonable cost basis for a *hospital* that has historically been the operator of nursing and allied health education program(s) * * * " (Emphasis added) (H.R. Rept. No. 108-10, 108th Cong., 1st Sess., 1115

(2003)). The commenter believed this language indicates that Congress intended that schools should be reimbursed, not particular courses.

In addition, commenters expressed concern that capping reimbursement for educational programs effective October 1, 2003, would further aggravate the existing shortage of appropriately trained healthcare workers. Finally, commenters suggested that the October 1, 2003 effective date be postponed because this date will cause hardship for institutions currently in the process of creating educational organizations for the purpose of transitioning their programs to those educational organizations.

Response: We acknowledge the commenters' general support of the proposed changes. In response to the commenters who disagreed with our proposal for limiting payment to certain classroom costs, as we stated in the preamble to the proposed rule (68 FR 27210), this proposed exception to the reasonable cost payment policy for programs operated by wholly-owned subsidiary educational institutions was based on a question that we received from a hospital pertaining to the language in the January 12, 2001 **Federal Register** (66 FR 3363) concerning hospitals that established their own educational institutions to meet accreditation standards. Specifically, the hospital that raised the issue previously received Medicare reasonable cost payment for the direct operation of nursing and allied health education programs and then established its own wholly-owned subsidiary college to operate the programs, in order to meet accreditation standards. The hospital in question has continued to receive Medicare payments after the hospital moved operation of the programs to the wholly-owned subsidiary college. The hospital believed that, based on the cited preamble language in the January 12, 2001 **Federal Register** regarding wholly owned subsidiary colleges and the lack of prior specific guidance on this particular organizational structure (as well as its continued receipt of pass-through payments) and because the hospital continues to pay all of the costs of the nursing and allied health education programs, that it is still the direct operator of the programs and should continue to receive pass-through treatment.

As we stated in the proposed rule, we believe that once the hospital moved the direct operation of its nursing and allied health education programs to the college, the programs no longer met our provider-operated criteria at § 413.85(f).